Texas Criminal procedure and evidence FE

When a defendant is arrested, he or she must be presented before: (1) The magistrate who issued the warrant; or, (2) a magistrate of the jurisdiction in which he or she was arrested.

The examining trial must be held before: (1) A magistrate of the county with jurisdiction over the offense.

District Courts have jurisdiction over the following offenses: (1) Felonies; (2) Misdemeanors involving official misconduct; (3) Misdemeanors transferred from county court presided over by a non-attorney judge.

County Courts have jurisdiction over the following offenses: (1) Misdemeanors where the penalties exceed a $500 fine; (2) Misdemeanors where exclusive jurisdiction is not given to the justice courts; and (3) Appellate jurisdiction over justice and municipal courts.

Municipal courts have jurisdiction over the following offenses: (1) Exclusive jurisdiction over city ordinance violations punishable by fines less than $500; (2) Concurrent jurisdiction over violations of law punishable by fine or other non-jail penalty.

Justice courts have jurisdiction: Where punishment is only by fine or non-jail penalty, and this is held concurrently with Municipal Courts.

Trials for appeals from justice and municipal courts to the county court receive de novo review.

There are nine reasons why a magistrate may issue a search warrant: (1) Property acquired by theft or other crime; (2) Obscene materials; (3) Drugs illegally possessed or made; (4) Contraband and gambling devices; (5) Property used in the commission of crime; (6) Persons; (7) An abused child; (8) Property constituting evidence of offense or tending to show that a particular person committed an offense; (9) Contraband subject to seizure.

The requirements for a search warrant to be issued are: (1) A sworn showing of facts constituting probable cause; (2) All supporting information must be in the four corners of the affidavit.

A search warrant must state: (1) The name or description of the: (a) person; (b) Place; or, (c) Thing to be searched; (2) Identification of what is to be seized; (3) must be dated and signed by the magistrate.

Evidentiary search warrants are issued for items containing evidence of an offense.

Generally Justice Court of Appeals, Justices of the peace, and certain municipal court judges may not issue an evidentiary search warrant.

A person who has been searched pursuant to an evidentiary search warrant may be searched again, only if the warrant is issued by a judge of: (1) A district court; (2) court of criminal appeals; or, (3) Supreme Court.

The requirements to issue a valid evidentiary search warrant are: (1) Must set forth sufficient facts to establish probable cause to believe that a specific offense has been committed; (2) The itmes to search constitute evidence; and, (3) are located at a particular place.

Officers may seize pursuant to an evidentiary warrant only that which is described; however, the exception is that officers may seize items which are subject to seizure for other reasons, if they are discovered in plain view.

A search warrant must be executed within three days of issuance. However, this does not include the day of issuance and the day of execution.

An officer must do the following before removing any seized property: (1) Prepare a written inventory; (2) Sign it; and (3) Present a copy to the owner or possessor; (4) Must also execute a return on the warrant and deliver it with a copy of the inventory to the issuing magistrate.

In order to conduct wire tapping or other similar activity a special court order is required. This may be issued only to secure evidence of a felony violation of certain crimes.

The sort of notice that is required to be given to a suspect whose communications are tapped is as follows: (1) 90 days after the order has expired, the judge must notify the suspect that the order was issued, and whether communications were

intercepted; (2) The notice must be received at least 10 days before trial for evidence obtained to be admissible.

The following type of property is subject to seizure and forfeiture: (1) Property used or intended to be used in the commission of major criminal offenses or the Criminal suspect agrees; (2) Proceeds from commission of above offenses; (3) Acquired with above proceeds.

An affidavit for a search warrant to seize property must establish probable cause that: (1) A specific felony offense was committed; (2) Property constitutes forfeitable contraband; (3) Property is located where the search will be made.

The proceedings for forfeiture are as follows: (1) The prosecutor files notice of seizure and intended forfeiture within 30 days of seizure, and also files lis pendens if it is real property; (2) Hearing is held where the state must prove by a preponderance of the evidence that the property is, in fact, contraband.

Those who may issue a warrant for seizable contraband are: (1) A judge of a statutory court; (2) Judge of a District Court; (3) Justice of Criminal Court of Appeals; (4) Justice of the Supreme Court; or, (5) Judge of a Municipal Court of Record Who is a licensed attorney.

The requirements to protect an innocent person's interest in property are: (1) The person did not know of the felony or that it was likely to occur; and, (2) Person's interest was required before a lis pendens notice was filed or before or during the offense giving rise to forfeiture.

An affidavit for an arrest warrant must show that there is probable cause that the person named in the warrant has committed an offense.

The requirements for an arrest warrant are as follows: (1) Specify the name or give reasonable definite description of the person to be arrested; (2) State that the person is accused of a particular offense and give adequate notice of what the offense is; (3) Contain a signature by the magistrate and give the office of that magistrate.

The following circumstances are those under which a warantless arrest is valid: (1) Committed offense within the officer's view or presence; (2) Probable cause to believe that conduct violated

a protective order; (3) Probable cause to believe that a felony is committed and the felon is about to escape; (4) Officer recovered stolen property and believes that the suspect was the one who stole it; (5) Probable cause that a suspect committed assault with bodily injury and immediate danger of further bodily injury is present; (6) Suspect is found in a suspicious place under circumstances that reasonably show that the suspect is guilty of: (a) felony; (b) disorderly conduct or the like; (7) Probable cause that the suspect committed assault with bodily injury to family or house hold member; (8) Probable cause that the suspect prevented or interfered with the ability to call in an emergency; (9) Voluntary statement to the officer that establishes probable cause that the suspect committed the felony.

An officer making an arrest without a warrant may enter a residence to make an arrest in the following circumstances: (1) The person who resides in the residence gives consent; (2) Exigent circumstances require that the officer enter without consent or a warrant.

An officer may break down the door of an house to make a felony arrest: If the officer first gives notice of his authority and purposes, and is refused admittance. This is known as the "knock-and-announce" rule.

An officer may not engage in racial profiling.

Law enforcement officers must present an arrested person before a magistrate: (1) without unnecessary delay; and (2) No later than 48 hours after an arrest.

After setting bail, a magistrate must inform a suspect of: (1) The charges against him; (2) His right to remain silent; (3) The right to retain counsel; (4) The right to appointed counsel, and the procedure for procuring such counsel; (5) right to an examining trial.

A writ of Habeas Corpus is a court order to a custodial person, directing him to produce a person in custody and show why they are being held.

Habeas Corpus may be used for the following purposes: (1) Challenge the amount of bail or the denial thereof; (2) Obtain appellate review of pre-trail ruling of no double jeopardy; (3) Attack a conviction after an appeal has failed or time has expired.

A petition for a writ of Habeas Corpus must state the following: (1) The person is being unlawfully confined; (2) The name of who is confining him; (3) Be attached to the writ or order under which the person is detained; (4) Contain a prayer for the writ; and, (5) Be sworn to, that the allegations within are true.

If a judge does not determine from the petition for a writ of Habeas Corpus that no relief is denied, then: (1) The party on whom the writ is served makes sworn return to the court stating that if the person is in custody, why that person is in custody; (2) The detained person is brought before the judge to determine propriety of detention.

The following factors are considered when setting bail: (1) Must be sufficiently high enough to give assurance; (2) Nature of the offense and circumstances under which it was committed; (3) Future safety of the victim and the community as a whole.

A bail bond is a written undertaking by a defendant to appear in order to answer a criminal charge. Security must be deposited with the court.

A personal bond is an amount which is set, and the defendant must pay it if he fails to appear. Unlike bail bonds, personal bonds require no security.

There are five situations where bail may be denied: (1) Capital murder case and the state establishes the likelihood of conviction and imposing the death penalty; (2) Felony charge where accused has 2 prior felonies; (3) Felony charge while on bail for previous felony; (4) Non-capital felony involving use of deadly weapon, and the accused has a prior felony; (5) Violent or sexual felony while on community supervision or parole for a felony, or violated condition on bail related to the victim's or community's safety.

A peace officer may set reasonable bail when: (1) It is a felony case and the court is not in session, and no bail is set by judicial officer; or, (2) In a misdemeanor case the magistrate is not available.

If bail is denied the detention is authorized for 60 days.

The following conditions of release on bail are specifically authorized: (1) Not to go near a child victim; (2) Remain at home; (3) Abide by home curfew; (4) Have breathalyzer ignition

lock installed on defendant's vehicle; (5) Not communicate with or go near victim (or in cases of drug possession, go near the dealer, or hang out with friends associated with drugs).

A release may be delayed for defendants arrested in prevention of family violence: 91) For four hours if the police have probable cause to believe that violence will continue; or, (2) 48 hours if the magistrate makes such a finding.

The purpose of an examining trial, which is a right unless an indictment has been returned, is to determine whether there is probable cause to believe that the defendant is guilty.

There are three possible results of an examining trial: (1) Discharge if no probable cause is established; (2) May be admitted to bail; (3) Commitment may be entered.

The period of limitations for criminal offenses start to toll at the date of the offense.

The prosecution may be brought for sexual assault on a child or indecency with a child within 10 years of the victim's 18th birthday.

The time during which the accused was absent from the state is not counted for the period of limitations.

The period during which a charge is pending against a defendant is not counted.

The filing of a complaint for a felony case does not toll the period of limitation. This means that the time is counted.

There is no limitations period for the following offenses: (1) murder; (2) manslaughter;(3) leaving the scene of an accident resulting in death or sexual assault where DNA evidence does not readily ascertain the identity.

The limitations period is 20 years from the victims' 18th birthday for the following: 91) sexual performance of a child younger than 17; (2) Aggravated kidnapping of a child under 17 with intent to abuse; or, (3) Burglary with intent to abuse a child under 17 years of age.

The limitations period for injury to a child is 10 years from the victim's 18th birthday.

The following crimes have a limitations period of 10 years: (1) Theft by fiduciaries; (2) Sexual assault; (3) First degree felony injury to elderly or disabled; (4) Indecency with or sexual assault of a child.

The limitations period is 7 years for the following offenses: (1) Misapplication of fiduciary property, or property of a financial institution; (2) Securing exchange of documents by deception; (3) Money laundering; (4) Credit card abuse; (5) False statement to obtain property or credit; (6) Fraudulent use or possession of an ID.

The following offenses carry a limitations period of 5 years: (1) Theft; (2) Burglary; (3) Robbery; (4) Arson; (5) Kidnapping; (6) Injury to child, elderly person, disabled person--if it is not a first degree felony; and (7) Abandoning or endangering a child.

Any felony which is not otherwise listed carries a limitation period of 3 years.

The limitation period for misdemeanors is generally two years.

The proper venue for offenses committed outside of the state is the county where the offender is found or an element of the offense occurred.

Proper venue for theft is the county from which the property was taken or the county through or into which property was moved.

The proper venue for crimes where the victim was injured in but where death occurred in another county. Venue is proper in either county.

The proper venue for kidnapping and false imprisonment is the county where the offense took place or the county through or into which the victim was taken.

Proper venue for conspiracy is the county where agreement was made or carried out, or the county where any conspirator performed any act to implement the agreement.

Proper venue for sexual assault is the county where the assault occurred, where the victim was abducted, or through or into which the victim was taken.

The proper venue for possession or delivery of marijuana is the county where the offense was committed, or if the defendant consents, in an adjacent county within the same judicial district.

The proper venue for unauthorized use of a motor vehicle is the county in which the vehicle was originally reported stolen or where the unauthorized use occurred.

The proper venue for organized criminal activity is the county in which any act to effect the objective of the combination was committed.

Proper venue for bigamy is the county in which bigamous marriage occurred; where the parties lived as husband and wife; or where the party to the marriage who is not charged resides.

Proper venue for escape is the county in which the escape occurred or where the defendant was originally placed in custody.

Proper venue for fraudulent use of identifying information is the county in which the offense was committed or where the victim resides.

The grounds for which challenges can be made for grand jury selection are: (1) Improper selecting; (2) Lack of qualifications.

The number of grand jurors necessary to indict are at least 9 out of 12.

A capias is the equivalent of an arrest warrant issued on the filing of an indictment or information.

Except for capital murder prosecutions, the requirements for a felony defendant to waive indictment and be charged by an information are: (1) Representation by counsel; (2) Waiver is written or took place in open court; and, (3) Waiver is voluntary.

The documents used in misdemeanor cases before a justice of the peace or municipal court is a complaint, otherwise it is an information.

Defendants in a felony prosecution have a constitutional right to be charged only by a grand jury indictment, and this right is waivable.

A traffic ticket may serve as a charging instrument in traffic cases where the maximum penalty is only a fine.

Defendants in a felony case who are in custody must be served with the charge immediately. If the defendant is out on bail then only when requested. In misdemeanor cases they must be served with a charge only upon demand.

The number of offenses that may be charged in one indictment is usually only one offense; the exception is that the state may allege alternate ways of committing the same offense; or that offenses were part of the same criminal episode.

Multiple defendants may be charged together in the same charging instrument if it is part of the same criminal episode.

Defects in an indictment must be raised at pretrial, otherwise they are waived.

The defects on the charging instrument that will not affect its validity are: (1) Misspelling and bad grammar; (2) Unless it denies the defendant adequate notice.

The prosecution may cure by amendment at any time before the day the trial on the merits commences for an indictment containing a defect of form or substance.

The requirements for an amendment to a charging document are as follows: (1) Leave of court; (2) Under court's direction; (3) Notice must be given to the defendant, and the defendant may request a delay to respond.

A charging document may not be amended over the objections of the defendant when: (1) The amended information or indictment charges the defendant with additional or different offenses; or, (2) Substantial rights of the defendant are prejudiced by the amendment.

Lack of objection from the defendant is required to amend an indictment after the trial commences.

Some specific defects that arise in charging instruments are: (1) Failure to include magic words required by the code; (2) Failure to allege venue; (3) Failure to allege facts constituting all elements of the offense; (4) Failure to identify the victim; (5) Failure to allege facts showing

recklessness or negligence if the defendant is charged with either.

The state has the burden of proving that the details, were in fact, unknown to the grand jury, and the grand jury could not, with reasonable effort, have ascertained the unknown information; when an allegation is made that the details are unknown at trial.

An instrument may also charge beside the included charge, lesser included offenses.

The grounds for which a motion to set aside indictment or information are: (1) Indictment not found by at least 9 grand jurors; (2) Prosecution barred by the passage of time; (3) Some person not authorized was present before the grand jury while deliberating or voting; (4) Grand jury was illegally impaneled; (5) Any other ground authorized by law.

An exception to substance of indictment or information may be made for the following reasons: (1) it does not charge an offense; (2) Prosecution is barred by the passage of time; (3) Offense was committed after finding of the indictment; (4) Contains a matter that is a legal defense or bar to the prosecution; (5) Shows on its face that the court does not have jurisdiction.

An exception may be taken to form of indictment information when: (1) Does not appear to have been presented in the proper court; (2) Lacks one or more of the requisites of the code; (3) Was not returned by lawfully chosen or impaneled grand jury.

The procedures for a motion challenging indictment or to quash are: (1) Be in writing; (2) Filed before the date of trial; (3) Specify the particular aspect of the charging instrument that the defendant regards as defective.

Arraignment may be waived.

There are three functions of arraignment: (1) Fixes defendant's identity; (2) Counsel is appointed for indigent defendants; and, (3) Defendant's plea is heard.

Under the following circumstances a second trial on the same or related charges is permitted: (1) If first trial was to jury and jury was sworn; (2) At bench trial, parties announced ready and plea was entered; (3) Mistrial declared for manifest necessity,

or by request of the defendant, or declared by appellate court because of error of law; (4) When Each crime requires proof of something the other does not; and, (5) First prosecution is federal. These issues are known as Former Jeopardy.

An attorney appointed to represent an indigent defendant has 10 days to prepare, but this may be waived in writing and signed by both defendant and attorney.

A continuance may be granted after trial begins for the following reasons: (1) Showing of an unexpected occurrence at trial that took the moving party by such surprise that a fair trial could not be had; (2) showing of good cause if the parties agree; and, (3) Missing witnesses, but there are special requirements.

The standard for determining the defendant's competency: If because of some impairment, existing at the time of trial, the defendant lacks either: (1) Sufficient present ability to rationally consult with his lawyer; (2) An understanding, rational or factual, of the proceedings against him.

The presumption and burdens of proof for competency are: (1) Presumed competent; and, (2) Incompetency must be proved by a preponderance of the evidence.

The court must doe the following three things if there is a suggestion and some evidence of a defendant's incompetency: (1) Have the defendant examined; (2) Hold a hearing; (3) Make a determination of competency. Note that a jury trial may be held by request of court or either party.

What happens when a defendant is found incompetent: (1) Released on bail for treatment, or confined to mental health facility for up to 120 days, extendable for another 60 days; (2) After treatment or the period expires, prosecution proceeds if competent; or, (3) If not competent, defendant may be committed for a longer period.

there are two reasons why the court must order separate trials of defendants charged with the same offense: (1) One defendant has a prior conviction admissible against him; (2) Joint trial would be prejudicial to one or more of the defendants.

the exception to the one indictment, one offense, one conviction rule dealing with several counts of intoxication manslaughter, sexual assault, or certain sexual offenses involving children:

Charges may be tried together and the defendant does not have an automatic right to severance. He may still obtain severance if he shows that a joint trial would be prejudicial.

The following motions must be made before trial: (1) Motions to quash or set aside the charging instrument; (2) Motions and elections relating to the assessment of penalty, including election for jury sentencing; (3) Motion to have jury consider recommendation for probation.

The court may authorize the defendant or prosecution to take a deposition when there is a finding of good cause.

The defendant has the following rights in pretrial discovery: (1) Right to the witness list (unless found on indictment); (2) Right to inspect prosecution's evidence except for written statements of witnesses and work product; (3) Right to know informant's identify if the informant is a material witness.

The filing of a written statement setting out reasons for dismissal and consent of the presiding judge are required to dismiss the trial upon the state's motion.

The issue of venue may be raised by either side or the court may raise it sua sponte.

The standard for determining whether venue should be charged is whether a fair and impartial trial to the moving party cannot be held in the location.

Venue may be moved if it is changed to another county in the same judicial district or an adjoining district with the defendant's consent.

A judge may be disqualified from hearing a case for the following reasons: (1) Judge is party injured; (2) Judge has been counsel for the state or the accused; (3) Judge is related in the 3rd degree of consanguinity; (4) Bias, if it would deny due process of law.

A traditional motion in limine asks the opposing party to approach and notify the judge prior to developing specified matters before the jury.

A non-traditional motion in limine asks the court to address and rule on specified matters before trial.

The special requirements in insanity cases are: (1) must give the prosecution and court notice before use; (2) Court may appoint disinterested experts to examine the defendant and give evidence concerning insanity.

The attorney or pro se defendant certifies by the required signature to a pleading, that he has read the pleadings and reasonably believes after inquiry that the document is not groundless, brought in bad faith, or brought for harassment, delay, or other improper purposes.

A defendant has the right to go to the jury on suppression issues, when the evidence is challenged on grounds that it was obtained in violation of the U.S. Constitution, or the laws of the U.S., or the laws and constitution of state of Texas.

The burden of proof in such cases is that the state must prove beyond a reasonable doubt that the evidence was obtained legally.

Texas criminal trial have two parts: (1) Trial on the guilt or innocence; (2) Penalty trial; (a) Both may have a jury.

A unanimous verdict is required in a criminal trial.

A verdict may be returned by less than 12 jurors: In a felony, if one juror dies before the charge is read to the jury, then the remaining 11 may render, or after the charge is read if both parties agree, otherwise the jury is discharged.

The following challenges for cause are available during voir dire: (1) Not qualified voter; (2) Has been convicted or charged with theft or felony; (3) Insane; (4) Is a witness in the case; (5) Bodily defect rendering unfit for service; (6) Related within 3rd degree; (7) Served on grand jury or jury in previous case; (8) Has bias or prejudice; (9) Formed opinion regarding guilt that would influence the verdict; (10) is illiterate.

Jurors are absolutely disqualified, whether or not a challenge is raised when: (1) Insane; (2) Convicted or charged with a theft or felony.

A defendant may waive a jury trial in any case except a capital case where the state notifies the court that it will seek the death penalty.

Each side has 15 challenges in a murder case where the death penalty is being sought. In the case of multiple defendants then there are 8 challenges per defendant.

There are 10 preemptory challenges in a capital murder case where the death penalty is not being sought or in other felonies. If there are multiple defendants then there are 6 preemptory challenges per defendant.

there are 5 preemptory challenges allowed for misdemeanors in district court, if there are multiple defendants then three.

there are three preemptory challenges allowed in county court, and the number is same per defendant in cases of multiple defendants.

In justice and municipal courts there are only 3 preemptory challenges whether or not multiple defendants are involved.

Preemptory challenges may never be based upon race, and the defendant has the burden of proof of proving that such challenges are improper.

Alternate jurors may be substituted for regular jurors when: (1) Regular jurors are unable to serve or become disqualified; (2) Parties agree and the court finds that a regular juror has good cause for not performing.

If three or four alternate jurors are to be impaneled then each side gets 2 preemptory challenges. However, if only one or two alternate jurors are to be impaneled, then each side only gets one preemptory challenge.

In district court four alternate jurors may be impaneled in criminal trials. For county courts only two alternate jurors may be impaneled.

The special procedure for jury selection in capital cases is that the juror is disqualified if he cannot state under oath that a mandatory penalty of death or life imprisonment will not affect his deliberations on any question of fact. Two alternates may be selected in capital cases.

Confidential information about a juror may be disclosed when either party or a member of the media applies for an order permitting disclosure, which may be granted only for good cause.

A defendant may not be present at trial: (1) With prosecutor's consent, at proceedings for fine-only misdemeanors; (2) If voluntarily absent, after being present for jury selection, trial may proceed--but punishment cannot be imposed with out defendant being present.

A judge may not make remarks that convey her opinion of the case to the jury.

Either side may move for a mistrial or a mistrial can be declared by the court as when a jury cannot agree.

A motion for directed verdict may be made at the end of the prosecution's case in chief, and again at the end of all the evidence. The standard is that the evidence does not sustain a jury verdict of guilty.

Jury arguments are limited to the following matters: (1) Summation of the evidence; (2) reasonable deductions from the evidence; (3) Answers to arguments of opposing counsel; (4) Pleas for law enforcement.

The following arguments are improper for jury arguments: (1) Juror's personal view of counsel; (2) Attacks upon the defense counsel; (3) Arguments that the community demands conviction.

The state makes the last argument. They generally make the first argument and the last argument.

when a defendant offers new evidence, after resting but before the charge is read to the jury, he is not allowed to reopen when: 91) it will impede the trial; or (2) It interferes with the administration of justice.

A jury charge contains an abstract of law and application to the facts of the case.

The jury should be instructed on lesser included offenses when the evidence introduced could reasonably be construed as showing that the defendant was not guilty of the charged offense, but guilty of the lesser included offenses.

The jury should be told to return a verdict of not guilty by reason of insanity when: (1) Prosecution has proved beyond a reasonable doubt that the defendant would be guilty; (2) Defendant has established by a preponderance of the evidence that he was insane at the time of the conduct.

The court must commit to a mental hospital when the jury returns a verdict of not guilty by reason of insanity where the conduct involved serious bodily injury or attempt or threat to cause the same. Note however that the defendant cannot be confined for longer than 30 days without a hearing, and the jury may not be told of this consequence.

A subpoena duces tecrum is used to compel a witness to produce a document.

The effect of a grant of immunity to a witness is that it removes the 5th Amendment privilege against self-incrimination.

The Texas Rules of Evidence are fully applicable to the following Criminal Procedures: (1) Criminal trials in Texas Courts; (2) Bail hearings; (3) Examining trials.

hearings on the admissibility of evidence should be conducted outside the presence of the jury.

Relevant evidence is inadmissible where the probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, danger of undue delay, or needless presentation of cumulative evidence.

Character evidence is inadmissible to prove conduct, or that the person acted in conformity with character on a particular occasion. It is, however, admissible to substantiate a claim of self defense. Thus the defendant may introduce evidence that the victim had a violent character.

In a homicide prosecution, the evidence which the state may introduce after the defense introduces evidence that the deceased was the aggressor is: evidence that the deceased had a peaceful character.

A state may not prove the defendant's guilt by introducing evidence of bad character except when the sentencing proceedings are occurring or where the defense puts the defendant's character in issue.

Reputation testimony is admissible when character is in issue.

The state cannot introduce evidence of extraneous offenses or bad acts. the exceptions are if relevant to other issues than

bad character, such as motive, opportunity, common plan. Also in prosecutions for certain crimes against children.

habit and routine practice evidence may be introduced to prove that a person's conduct on a particular occasion was in conformity with that habit.

In the special situation of homicide cases, testimony as to all relevant facts and circumstances regarding the killing, and previous relationship between the accused and the deceased may be introduced by either side. This includes mental condition of the accused at the time of the offense (such as intent to kill or lack thereof).

Evidence of previous sexual conduct of a victim is admissible, only when the probative value of the evidence outweighs the danger of unfair prejudice and the evidence is: (1) Necessary to rebut the state's medical evidence; (2) Offered on an issue of consent; (3) Relative to the victim's motive or bias; (4) evidence of victim's conviction of crime admissible as impeachment; (5) Evidence that must, as a matter of constitutional law, be admitted.

The following pleas are inadmissible as evidence: (1) Withdrawn guilty or nolo contendere pleas; (2) Any in-court statements regard withdrawn pleas.

The court must give the jury the following instruction regarding judicial notice: The jury may, but is not required to accept as conclusive any fact which is judicially noticed.

The other side may introduce the following when one side introduces all or part of a writing (noting that writings include deposition testimony): (1) Any other part of that writing which ought, in fairness to be considered contemporaneously;(2) Any other writing that ought in fairness, to be considered contemporaneously with the original writing.

Criminal law treats the following privileges the same as they are treated in civil litigation: (1) Clergy privilege; (2) Privilege to disclose political vote; (3) trade secret privilege; (4) Privilege for required reports.

The person who holds the privilege is the only person who may waive them.

A privilege is waived when a person calls as a witness a person to whom the privileged communications have been made, and that person is called to testify as to the party's character.

The attorney-client privilege covers: (1) Any communications between the lawyer and client for the trial; (2) Any fact the lawyer learned by reason of the attorney-client privilege.

The defendant's spouse has the privilege not to be called a witness. However where the crime is committed against the spouse or a minor child, and regarding matters occurring prior to marriage to the defendant there is no such privilege.

In the marital privilege the spouse does not have a privilege to refuse to testify for the defense.

Unlike any other privilege the defendant's failure to call the spouse can be commented upon.

Only the testifying spouse may assert the spousal privilege. Whereas the privilege for marital communications may be asserted by either spouse.

The requirements for the spousal privilege is that they are presently married at the time of trial, and it must only be a criminal case.

The requirements for the privilege of marital communications is that the communication is confidential and made when married (thus they don't necessarily have to be married at the time of trial, either spouse hold this privilege, and it is not confined to criminal cases).

The exceptions for the privilege of marital communications are: (1) communications used to aide or enable the commission of a crime or fraud; and (2) Crimes against the spouse or a household member or any child.

A representative of the public entity to which the information was provided may claim the privilege for identity of an informer. And the state may object and disallow the privilege.

There is no privilege for identity of informer when: (1) Voluntary disclosure; (2) Informer has information on guilt or innocence; (3) Informer has information on legality of obtaining evidence.

The general requirement of first-hand knowledge is that a witness may not testify to a particular matter without showing that the witness has first-hand knowledge of the matter.

The following are incompetent to testify in Texas: (1) Insane persons; (2) Children; and (3) Others of limited intellectual abilities.

An expert witness may testify in opinion form or otherwise as to scientific, technical, or other specialized knowledge.

An expert's opinion may be based upon: (1) facts perceived by the witness personally; or, (2) Information otherwise obtained.

The standard of proof for a proponent of scientific evidence is by clear and convincing evidence.

Any party , including the party calling the witness may impeach a witness.

Leading questions may be used on direct examination only if it is necessary to develop the witness's testimony, or if the witness is hostile, an adverse party, or identified with the adverse party.

Evidence of a character of a witness may be attacked when testimony that character for truthfulness is bad. This can only be done after the credibility of the witness has been attacked and may then be bolstered by evidence of truthful character; however, credibility may not be attacked by inquiry into specific instances of conduct.

Prior conviction may be used for impeachment purposes where: (1) There has been a final conviction; (2) The conviction is not stale; (3) The crime involved moral turpitude or was a felony; (4) The probative value of the evidence outweighs any prejudicial effect.

A conviction is stale after the passage of 10 years.

Extrinsic proof of a prior inconsistent statement may be admitted only after a witness has been told of that statement, and is given an opportunity to explain or deny that statement.

To impeach a witness by inquiry into circumstances showing bias or interest the following must be done: After said circumstances

have been made known to the witness, and given an opportunity to explain or deny. Rebuttal evidence is permitted.

Evidence of a witness's religious beliefs are inadmissible to show that such beliefs impair or enhance the credibility of the witness.

Prior consistent statements of a witness are admissible where: (1) Declarant testifies at trial and is subject to cross-examination concerning the prior statement, and; (2) The prior statement is offered to rebut a charge against the witness of recent fabrication or improper motive.

The rule of exclusion of witnesses does not apply to the following: (1) defendant who is a natural person; (2) Officer or employee of corporate defendant; (3) person whose presence is shown by a party to be essential to presentation of that party's case; (4) The victim, unless the court finds that the victim's testimony would be materially affected by hearing other testimony.

The other side is entitled to the following if a witness uses a writing to refresh their memory: (1) Have the writing produced for inspection; (2) Cross-examine the witness on the writing; (3) Introduce into evidence those portions of the writing that relate to the testimony of the witness, but the court may excise irrelevant portions.

The use before the jury rule allows the counsel for either side to inspect any document, statement, photograph, etc. That has been used by the other side before the jury in such a way that its contents become an issue.

If inadmissible hearsay is admitted without objection, then it may not be denied probative value.

the exception to the exception for public records and reports is that such records are barred insofar as they concern matters observed by law enforcement personnel.

A dying declaration is admissible when: (1) Made while the declarant believed that death was imminent; (2) it concerns the cause or circumstances of what the declarant believed was his impending death; and (3) The Declarant is unavailable as a witness.

The exception for statements against interest at the time of making them is: Admissible if reasonable person in the declarant's position would not have made the statement unless she believed it was untrue. Unavailability of the declarant is not required. If it is against penal interest, there must be corroborating circumstances.

Out of court statements identifying a person upon preciving him are admissible if the declarant testifies at trial and is subject to cross examination.

The requirement for prior inconsistent statements to be admissible at trial are: (1) Declarant must testify at trial and be subject to cross examination concering the statement; (2) the statement must be inconsistent with testimony; (3) Statement must have been made under oath and subject to perjury at trial or in a deposition, but not before a grand jury.

Evidence unlawfully obtained is admissible when: the evidence is obtained by a law enforcement officer acting in objective good faith reliance on a warrant issued by a neutral magistrate based upon probable cause.

A child for purposes of child testimony statutes is an individual no more than 12 years of age.

the general requirements for the child testimony statute are as follows: (1) Child must not be available to testify at trial; (2) No in-court testimony except on showing of good cause; (3) In-person identification of the accused by the child is required.

Depositions are admissible in criminal cases only upon proof of unavailability of the witness.

Photographs are admissible if a verbal description of the crime scene, victim, or body of the deceased would be admissible. A properly authenticated photograph of the same is also admissible. The court may exclude otherwise admissible photographs if the probative value is outweighed by inflammatory potential.

Lie detector evidence is inadmissible. Parties may not stipulate as to polygraph admissibility.

The confession statute applies to all statements of the accused that result from official custodial interrogation.

The requirements for a written confession are: (1) Must be signed by the defendant; (2) Show that Miranda warnings were given; (3) Show that rights waived before and during confession were done so: (a) Knowingly; (b) Intelligently; and (c) voluntarily.

Oral confessions are generally inadmissible.

A defendant's oral statement be used to prove guild when: (1) Judicial statement; (2) Res gestae of the offense or arrest; (3) Partially corroborated; (4) Electronically recorded.

The two-witness rule for conviction of perjury states that testimony required of more than one witness, other than the defendnat, unless the state can show that the defendant made inconsistent statements under oath.

The question of whether evidence is sufficient to prove guilt is measured against a hypothetical jury charge. It does not include matters mistakenly included in the actual jury charge.

The accomplice witness rule is where conviction cannot rest on uncorroborated testimony of an accomplice. Corroborating evidence must tend to connect the defendant with commission of the offense. It is not needed in prostitution and gambling offenses.

The circumstances under which a conviction for a sexual offense can rest on uncorroborated testimony of the victim: Where the victim : (1) informed any person, other than the defendant, within one year; (2) was 17 years old or younger at the time of offense; (3) Was 65 years old or older at the time of the offense; (4) Was unable to satisfy her own need for good shelter, medical care, or protection from harm at the time of the offense.

The corpus delecti rule is where conviction cannot rest on a confession alone. that is, there must be corroboration. Corroborating evidence must tend to show someone committed a criminal act; but it need not connect the defendant.

The state does not need to disprove exculpatory provisions of a defendant's confession introduced into evidence by the state.

If there is a material variance between the detailed allegations in the indictment and the proof of trail, an acquittal was traditionally required. A material variance is where the variance is material only if it operated to the defendant's surprise or otherwise prejudiced the defendant's rights.

The revised variance rule states that whether the evidence is sufficient to support a conviction in a variance situation is to be determined by the hypothetical jury charge analysis. The critical question is whether an unproved allegation must be incorporated into that hypothetically correct charge.

For purposes of the revised variance law; A variance is material only if the indictment with the incorrect allegation failed to inform the defendant of the charges sufficiently to allow the defendant to present a defense.

There are two post-trial stages: (1) Assessment of punishment proceeding (right to have jury determine guilt or innocence); (2) imposition of punishment proceeding (Time begins running for purposes of determining timeliness of other actions).

If the defendant does not want to have the judge determine the sentence he most make a written election for jury sentencing before voir dire. After the guilty verdict, he may change election only with consent of the prosecutor.

The requirement to be eligible for community supervision (probation) is that the sentence asserted does not exceed 10 years imprisonment.

The defendant must do the following in order to be eleigible for community supervision: (1) File a sworn motion for community supervision; and the jury must find (2) that there was no prior felony conviction.

The following two elements found together, disallow a jury from recommending community supervision: (1) Defendant was convicted of the sale of a controlled substance to a minor; and (2) the defendant was 21 years or older at the time.

The trial judge may recommend an eligible defendant for community supervision. Lack of fluency in English is disallowed for denial of community supervision. Conditions may be imposed on community supervision.

Community supervision may be revoked after a hearing upon a showing that the defendant violated the terms of the community supervision. (known in Texas as a Motion to Revoke).

The effect of successful completion of community supervision is that the court may set aside the verdict of guilty and dismiss the charge. The charge may not be used for witness impeachment purposes, or for sentence enhancement later on.

If the defendant commits another crime during community supervision, the fact of conviction shall be made known to the court, and it precludes a finding of no prior felony conviction.

A shock community supervision allows a judge to suspend the execution of the remainder of a sentence of imprisonment after the defendant has served no more than 180 days, and puts the defendant on community supervision.

A judge can place a defendant on deferred adjudication when this serves the best interests of both the defendant and society.

Deferred adjudication is where the judge places the defendant on community supervision without determining guilt.

If the defendant successfully completes deferred adjudication: (1) The judge dismisses the defendant; or (2) the judge may adjudicate guilt and sentence the defendant on a finding of guilt if the defendant fails to successfully complete.

In order to be eligible for deferred adjudication: (1) the defendant has offered to plead guilty or nolo contendre; and, (2) The crime is not an intoxication offense, continuous sexual abuse of a child, or aggravated sexual abuse of a child.

The procedure to impose deferred adjudication is as follows: (1) the judge must receive defendant's plea, and hear evidence that substantiates guilt; (2) Judge must inform the defendant that violating the conditions will allow the judge to adjudicate and impose whatever sentence originally could have been imposed.

A defendant would be ineligible for judge-ordered community supervision for the following offenses: (1) Murder; (2) Indecency with a child by sexual contact; (3) Aggravated kidnapping; (4) sexual assault; (5) Robbery; (6) Drug offenses in a school area; (7) Sexual performance by a child; (8) Intentional injury to a child resulting in serious bodily injury.

A defendant would be ineligible for jury-recommended community supervision for the following offenses: (1) Murder; (2) Indecency with a child under age 14 by contact; (3) Aggravated sexual assault of a child under 14; (4) Aggravated kidnapping of a child under 14 with intent to sexually abuse; (5) Sexual performance by a child.

The maximum length for community supervision in a felony case is 10 years generally, and 5 years in some situations. In the case of a misdemeanor the maximum length for community supervision is 2 years.

The following evidence may be offered at the jury sentencing hearing: Any matter the court deems relevant to sentencing, including: (1) Prior criminal records; (2) Character; (3) Circumstances of the offense; and, (4) Extraneous crimes or bad acts.

The state must give the following notice upon timely request to the prosecutor regarding evidence at the sentencing hearing: (1) Date of any bad act or crime alleged; (2) County wherein the act or crime occurred; (3) Name of victim of the act or crime.

the state's burden of proof for bad acts and crimes of which the defendant has not been convicted is beyond a reasonable doubt.

The following rules of evidence apply at a sentencing hearing: (1) Traditional Rules of Evidence; except (2) The general prohibition against state proving bad character is inapplicable at sentencing.

A unanimous verdict is required on the penalty, otherwise a mistrial must be declared.

If a mistrail is declared on the punishment, then a retrial limited to punishment may be held.

The special instruction required on life imprisonment is that if the defendant is sentenced to life imprisonment, rather than death, the defendant will not be eligible for parole.

The following evidence and arguments may be presented at a separate hearing before the same jury when a defendant is convicted of capital murder: for the evidence it is any matter the court deems relevant except race or ethnicity to prove

dangerousness. In regards to arguments they are why or why not the death penalty should be imposed.

The following three issues are submitted to the jury in determining capital sentencing: (1) Whether there is a probability that the defendant would commit criminal acts of biolence that would constitute a threat to society; (2) whether the defendant actually caused the death of the victim, intended to kill the victim, or anticipated that human life would be taken; and, (3) whether there are sufficient mitigating circumstances to warrant life imprisonment.

The defendant has the following right at the formal pronouncement of the sentence--Right of allocution which is to personally state the reason why the sentence should not be pronounced; the victim or a relative of a deceased victim has the right to a victim impact statement.

The state must allege and provide prior convictions in order to increase a penalty for a criminal offense.

If the penalty for a felony offense is moved into the next most serious category, then there was a prior felony conviction which was proved. In the case of two prior felonies the defendant must be sentenced to life or 25 years to 99 years in prison.

The following biological and DNA material must be preserved. Evidence that would more likely than not: (1) Establish the identity of the person committing the offense; or, (2) Exclude a person from a group of persons who could have committed the offense.

The grounds for granting a new trial are: (1) Bribery of a juror; (2) Intentional destruction of exculpatory evidence; (3) Verdict contrary to the law and evidence.

A defense motion for a new trial must be filed 30 days after formal sentencing; and it must be presented to the court 10 days after filing. The trial judge may allow 75 days after formal sentencing.

The standard for newly discovered evidence allowing a new trial is that the evidence must be material.

There is a right to appeal after trial de novo on appeal when: (1) the fine imposed by the county court exceeds $100.00; or,

(2) The sole issue is the Constitutionality of the statute or ordinance on which the conviction is based.

A defendant may appeal after pleading guilty or nolo contendre when: (1) The trial court grants permission to appeal; (2) Matter was raised by written motion and ruled on before trial (motion in limine) .

An appeal is perfected when any required notice is given.

Notice of an appeal must be given within 30 days of formal sentencing. 90 if the motion for new trial has been filed; and extension to this may be granted.

Upon appeal, the record must contain the trial judges certification of the right to appeal. This states whether the case is a plea bargain case, and if so, why the defendant has the right to appeal despite the nature of the case.

The record on appeal consists of: (1) The clerk's record; (2) the Court Reporter's record; (3) Docketing statement by appellant.

The appealing party has the responsibility to ensure that a sufficient record is presented to the appellate court.

The appellant must file their brief within 30 days of the filing of the clerk's record or the reporter's record. The appellee must file within 30 days after the appellant's brief.

A motion for rehearing may be filed within 15 days after the court of appeals' judgment. Not required to preserve error.